

### Appendix 3:

## Attachment of Earnings Orders (AEOs) for criminal fines National Pilot April 2004

### Employers' Frequently Asked Questions

#### **1. What is the background to this initiative?**

The Courts Act 2003 provides the primary legislation to enable the wider and speedier use of AEOs by Magistrates' Courts to recover criminal fines. The Courts Act is supplemented by secondary legislation which enables its fines enforcement measures in Schedule 5 to be piloted.<sup>1</sup> Currently AEOs are not consistently used by Magistrates, partly due to a lack of awareness of them as an enforcement route. However concerns expressed by the Treasury that the rate of recovery of fines was unacceptable has led to this new project.

#### **2. What will happen on the pilot?**

Originally these changes were due to come into effect in April 2005 as part of the Unified Administration of the courts system. At present Magistrates' Courts operate entirely independently of each other and of the County and Crown Courts. From April 2005 they will all be brought together under a newly created agency (Her Majesty's Court Service), which will fall under the ambit of the Department for Constitutional Affairs. The pilots consist of two strands: a small-scale pilot in six courts areas (MCCs) of various new enforcement measures; and a national pilot of wider Attachment of Earnings Orders and deductions from benefits, together with the national roll out of a new offence for non-provision of means information. From the employers' perspective all magistrates' courts will be using AEOs much more extensively whilst the original six pilot courts will trial increases in the fine upon default, registration of the fine, clamping of vehicles and fines payment work (for those who cannot afford to pay). It is a pilot in so much that evaluation will take place over the course of the year and changes will be made as part of the final regulations that will come into force in April 2005

#### **3. What are these AEOs classed as?**

They are 1971 Act Priority orders modeled on a similar basis as council tax orders (CTAEOs). This means that they will specify a percentage deduction based on a table of earnings that is the same as the council tax tables. Previously AEOs for fines were fixed rate deductions with a Protected Earnings Rate (PER).

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<sup>1</sup> The Collection of Fines (Pilot Schemes) Order 2004) (S.I. 2004/175); The Fines Collection Regulations 2004 (S.I 2004/176.

#### **4. What will the AEO look like?**

Although a model order has been supplied by the Department for Constitutional Affairs, as each Magistrates' Court is independent they can choose to design their own. However you should expect to see

- a reference to the relevant legislation ie The Courts Act, 2003 and "the Fines Collection Regulations 2004" (SI's 2004 Nos 175 & 176)
- the permission to deduct the £1 admin fee from each deduction
- the statutory timescales for implementation as specified in the 1971 Attachment of Earnings Act (see point 8 below)

#### **5. Does this apply in Scotland and Northern Ireland too?**

No the regulations are specific to England but do not change the rules around the interaction of Scottish and English AEOs.

#### **6. What are the deadlines I must adhere to?**

You must tell the Court in writing:

- Within 10 days of receipt of the order if you no longer employ the person concerned
- Within 10 days of the employee's date of leaving should they cease to be employed
- Within 7 days of discovering a new employee has an existing AEO

You must operate the AEO from the first payday that is practical after receipt of the order (you have a 7-day grace period for this). If an order is discharged (cancelled) you should stop payments within 7 days if practical, or as soon as it is practical to do so.

#### **7. Where to and how are payments made?**

Magistrates' Courts are not part of the Courts Service that operates CAPS so there is no central electronic payment function as yet. It is hoped that this will change next year as part of the move to Unified Administration. In the meantime payments are normally made by cheque to individual courts (42 different destinations) payable to "the Clerk to the Justices". Some courts may accept BACS payments but you need to check with them first.

#### **8. Who can I talk to if there is a query on the order?**

Each court will have a Fines Officer, or someone fulfilling that role, who you should contact in the first instance using the telephone number provided on the AEO.

### **9. Will there be any other contact with employers?**

You will not be asked to verify any earnings or personal information before the AEO is made, this is the defendant's responsibility. If you fail to make a payment you may be contacted (by telephone, email or in writing) by the Court to ask why. You must ensure that you reply to this letter as failure to reply could be construed as your failure to comply with the order. Failure to comply can lead to criminal proceedings being instigated against the employer (under Section 23 of the AE Act, 1971).

Courts are anxious to ascertain the earnings information given to them by the defendant is accurate, so they may specifically request a copy of the employee's payslip that shows the AEO being deducted so that the amount of gross pay can be checked back to that supplied by the defendant.

### **10. Will the AEO contain details of the total debt owed so that the employer knows when to cease deductions or will there be a stop notice issued?**

Yes, the initial notice to employer should contain details of the full fine (plus any costs and compensation) to be paid. And yes, the court should also let the employer know when the order is about to be discharged.

### **11. Should the cumulative deductions be detailed on the payslip so that the employee can see how much of the debt has been repaid?**

This is up to the employer, depending on how easily their payroll systems will allow them to do this. In brief, the more information an employee has, the more easily he will be able to understand the nature and sum of deductions made against his pay. However, this is of little relevance to the court unless it specifically requests to see a copy of the payslip.

### **12. What impact will fines AEOs have on the repayment of student loans?**

AEOs for fines which are made under the both the 1971 Act and also those under the Courts Act 2003, assume a higher priority than student loan deductions. Inland Revenue officials and lawyers are aware of the issue and have indicated that they understand the position and are content with DCA guidance on the point.

### **13. How will bonus payments be affected by fines AEOs?**

Where an employee is paid a bonus on a normal payday, the nature of the fixed tables with the percentage deduction will take account of the bonus and no special action will be required by the employer. Please read on if you pay bonuses at different times to normal paydays.

The fixed tables which will now be used to make AEOs for fines define the percentage deduction which should be made based on the amount of pay received by the employee. Employers will be required to act in accordance with the order of the court. Where employers are using payroll systems based on the council tax AEOs, an automatic deduction of 20% will be made in these instances and it may therefore be necessary to make a manual adjustment to ensure that deductions are taken at the correct level. Once refinements have been made to the systems which support AEOs for fines using the Courts Act 2003, it is anticipated that such deductions will be automatically made at the correct level.